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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re the Marriage of ALFERMA CRAWFORD and EARL N. CRAWFORD.	
ALFERMA CRAWFORD, Appellant, v. EARL N. CRAWFORD et al., Respondents.	A138156 (Alameda County Super. Ct. No. RF08392202)

On appeal from a judgment of marital dissolution, petitioner Alferma Crawford challenges the family court's denial of her requests for sanctions and attorneys' fees. We find no legal error or abuse of discretion, so we affirm the judgment.

BACKGROUND

Alferma and Earl Crawford, Sr., had been married for 22 years when Alferma filed for divorce.[1] Following a four-day trial on the division of assets and support, the court issued a 53-page statement of decision, later incorporated into the judgment, that identified and allocated the parties' separate and community property assets. Neither party was awarded spousal support. One particular complexity of the case was the need to parse out the ownership of various assets as between Earl and Praises of Zion Church

[1]Because the parties share a last name, for clarity we will refer to them by their given names. We intend no disrespect by this standard practice.

(Praises of Zion), with which Earl had a long relationship as a pastor and which was joined as a third-party respondent in the divorce litigation.

This appeal does not challenge the court's rulings on support or the allocation and division of property, but instead is limited to the court's denial of Alferma's requests for need-based attorneys' fees pursuant to Family Code section 2030 and sanctions pursuant to Family Code sections 2107 and 271.[2] We will discuss additional background material as necessary as we address each of those rulings.[3]

DISCUSSION

I. Section 2030

Alferma contends the family court abused its discretion when it denied her claim for attorneys' fees under section 2030 during and at the conclusion of the litigation. " ' "[A] motion for attorney fees and costs in a dissolution proceeding is left to the sound discretion of the trial court. [Citations.] In the absence of a clear showing of abuse, its determination will not be disturbed on appeal." [Citation.] Thus, we affirm the court's order unless " 'no judge could reasonably make the order made.' " ' " (*In re Marriage of Dietz* (2009) 176 Cal.App.4th 387, 406.) There was no abuse of discretion here.

Section 2030 provides: " In a proceeding for dissolution of marriage, . . . the court shall ensure that each party has access to legal representation . . . to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party . . . to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding." (§ 2030, subd. (a)(1).) "When a request for attorney's fees and costs is made, the court shall make findings on whether an award of attorney's fees and costs under this section is appropriate, whether there is a disparity in access to funds to retain counsel, and whether one party is able to pay for legal

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[2]Further statutory citations are to the Family Code.

[3]Alferma's unopposed first amended motion and second motion to augment the record with documents filed in the trial court or admitted at trial are granted.

representation of both parties. If the findings demonstrate disparity in access and ability to pay, the court shall make an order awarding attorney's fees and costs." (§ 2030, subd. (a)(2).)

Additional guidance is found in section 2032, which authorizes a fee award under section 2030 "where the making of the award, and the amount of the award, are just and reasonable under the relative circumstances of the respective parties." (§ 2032, subd. (a).) In making this assessment, the court "shall take into consideration the need for the award to enable each party, to the extent practical, to have sufficient financial resources to present the party's case adequately, taking into consideration, to the extent relevant, the circumstances of the respective parties described in Section 4320."[4] (§ 2032, subd. (b).) "Given this statutory framework, a trial court has wide discretion in fashioning an award of attorney fees in marital proceedings. [Citation.] In assessing one party's relative need and the other party's ability to pay, the family court may consider all evidence concerning the parties' current incomes, assets, and abilities, including investment and income-producing properties." (*In re Marriage of Sorge* (2012) 202 Cal.App.4th 626, 662; *In re Marriage of Terry* (2000) 80 Cal.App.4th 921, 933.)

Here, the trial court determined the evidence did not support a fee award under these provisions. "The Court specifically finds that there has not been a disparity in access to funds to retain counsel in this matter based upon the evidence produced, other than Praises of Zion produced testimony that it had to use cash reserves to pay its attorney's fees and costs in this matter. [¶] The Court finds that no party in this case is able to pay the attorney's fees and costs of any other party in this matter pursuant to Family Code § 2030. Simply put, each party has a need for assistance with attorney's fees and costs in this matter but no party has the ability to pay his/her/its attorney's fees and certainly has no ability to contribute to the other parties' attorney's fees and costs." The question is whether the court could reasonably make this finding in light of the evidence.

[4]Section 4320 enumerates circumstances the trial court must consider in addressing spousal support.

Alferma argues it could not, because the court also found that Earl's testimony "lacked credibility regarding his finances, income and employment" and, as we understand her argument, because he could have paid her attorneys' fees from his separate property. She also asserts the court should have ordered Earl to pay her fees because he made frivolous motions and forced her to compel his mandatory disclosures. (See *In re Marriage of Sorge, supra,* 202 Cal.App.4th at p. 662 [court may consider party's trial tactics in determining whether to award fees].) The record does not compel that conclusion.

First, the court could (and presumably did) reasonably find that Alferma's larger earnings counterbalanced Earl's arguably greater separate assets, which the court took into account when it denied Earl's request for spousal support.[5] Moreover, although Alferma lists the assets allocated to Earl and says that, in contrast, she had neither savings nor "possession of any community or separate property," she was in fact awarded half of the equity in a San Leandro home valued at $450,000, half of the equity in a property located in New Mexico, and half of the balance in the couple's joint checking account. In addition, the court ordered Earl to pay Alferma $33,760 for her share in their jointly owned automobiles and $56,000 for her interest in an investment referred to as the "Gilley loan." This does not suggest such a financial disparity between the parties that would require an award of section 2030 fees.

It is true that the trial court found Earl's testimony lacked consistency and/or credibility on a number of points, and we do not doubt that the divorce litigation was made more burdensome by his lack of veracity. But Alferma's argument presupposes that section 2030 requires the court to award need-based fees whenever it finds a party's testimony was not credible. That is not the law. Instead, the court properly focused its inquiry on the parties' respective needs and abilities to pay for legal representation, and whether a fee award was necessary to level the legal playing field. (See, e.g., *In re*

[5]Despite Alferma's failure to cite the record for her claims about the assets awarded to Earl, we have reviewed the record and particularly the statement of decision to assess the parties' respective financial circumstances.

Marriage of Sullivan (1984) 37 Cal.3d 762, 768; *In re Marriage of Braud* (1996) 45 Cal.App.4th 797, 827.) After conducting an extensive and thoughtful analysis of the parties' respective finances, reflected in its statement of decision, the court determined that *neither* Earl nor Alferma had the financial resources to pay their own fees, let alone their spouse's. (See § 2030, subd. (a)(2); Hogoboom & King, Cal. Prac. Guide: Family Law (The Rutter Group 2013) ¶ 14:157.1 [court must consider proposed obligor's ability to pay].) That finding is supported by substantial evidence of the parties' respective incomes, earning capacities, and assets, and well within the court's broad discretion.

Alferma also suggests the court abused its discretion when it declined to order Praises of Zion to pay some or all of her attorneys' fees. In support, she says the evidence shows the church had over $1.2 million in its bank account in 2008 and about $300,000 at the time of trial. The cited evidence does not establish an abuse of discretion. First, the church's cash holdings on a date certain in 2008 have little bearing on whether the court should have ordered it to pay Alferma's fees more than three years later. Second, and in any event, Alferma misstates the evidence. The testimony she cites for her $300,000 figure shows, in fact, that the church had about $175,000 or $180,000 in cash at trial, which was budgeted for construction to make the church accessible to its disabled members. Without evidence elucidating the church's overall financial circumstances, and, specifically, its assets, earnings, liabilities and obligations,[6] we cannot possibly conclude the trial court abused its discretion in declining to find Alferma's request for a fee award from Praises of Zion was "just and reasonable under the relative circumstances of the respective parties." (§ 2032, subd. (a).)

II. Section 271

Alferma asserts the court abused its discretion when it denied her request for attorneys' fees as sanctions pursuant to section 271. This contention, too, is meritless.

[6]Alferma protests that protective orders barred her from obtaining further evidence of Praises of Zion's financial circumstances, but she does not claim that those orders were issued in error or provide argument, supported by appropriate legal authority and citation to the record, in support of such a claim.

Section 271, subdivision (a) authorizes the court to award attorneys' fees as sanctions based "on the extent to which the conduct of each party or attorney furthers or frustrates the policy of the law to promote settlement of litigation and, where possible, to reduce the cost of litigation by encouraging cooperation between the parties and attorneys." " '[T]he trial court's order will be overturned only if, considering all the evidence viewed most favorably in support of its order, no judge could reasonably make the order. . . .' [Citations.]" (*In re Marriage of Daniels* (1993) 19 Cal.App.4th 1102, 1106.) Alferma has not shown facts supporting reversal under this standard.

As Alferma observes and we have noted, the court found Earl's testimony lacked credibility and consistency in various respects. But section 271, like section 2030, does not mandate fees as a sanction whenever the court finds a party's testimony to be less than credible. Indeed, were that the law the court would also have had to impose section 271 sanctions on Alferma because it rejected her testimony about certain issues, including her agreement to donate Earl's malpractice award to the church and the source and ownership of some of the couple's credit union accounts. Again, that is not the law. The court's determination that the evidence did not justify an award under section 271 was within its discretion.

III. Section 2107, subdivision (c)

Alferma contends the court erred when it rejected her request for sanctions under section 2107, subdivision (c), for noncompliance with the Family Code's requirements for disclosure of assets and liabilities. Again, we disagree.

In relevant part, section 2107 provides: "(a) If one party fails to serve on the other party a preliminary declaration of disclosure under Section 2104 or a final declaration of disclosure under Section 2105, or fails to provide the information required in the respective declarations with sufficient particularity, and if the other party has served the respective declaration of disclosure on the noncomplying party, the complying party may, within a reasonable time, request preparation of the appropriate declaration of disclosure or further particularity[;] [¶] (b) If the noncomplying party fails to comply with a request under subdivision (a), the complying party may do one or more of the following: [¶] (1)

File a motion to compel a further response. [¶] (2) File a motion for an order preventing the noncomplying party from presenting evidence on issues that should have been covered in the declaration of disclosure [¶] . . . [¶] (c) If a party fails to comply with any provision of this chapter, the court shall, in addition to any other remedy provided by law, impose money sanctions against the noncomplying party. Sanctions shall be in an amount sufficient to deter repetition of the conduct or comparable conduct, and shall include reasonable attorney's fees, costs incurred, or both, unless the court finds that the noncomplying party acted with substantial justification or that other circumstances make the imposition of the sanction unjust."

The court denied Alferma's request for section 2107 sanctions. It explained: "Petitioner has failed to produce any evidence in the trial of this matter that she complied with the requirements of Family Code §2107, particularly evidence that a request was made to Respondent Crawford to prepare an 'appropriate declaration of disclosure or further particularity.' No evidence was presented to the Court during trial that any motion was filed with the Court during the pendency of this proceeding to compel a further response or a motion to prevent the 'noncomplying' party from presenting evidence on issues that should have been covered in the declaration of disclosure. [¶] *The Court received no credible evidence during the trial of this matter to justify an award [of] sanctions* pursuant to Family Code § 2107 against Respondent Crawford." (Italics added.)

Alferma asserts this was error because "[n]othing in the language of subsection (c) implies a requirement to follow (a) and (b) in order to obtain relief under (c)." In other words, section 2107 sanctions are available whether or not the party seeking them has first filed a motion to compel a further response or to bar the other party from presenting evidence on issues that should have been covered by the disclosure. We need not decide whether her interpretation of the statutory language is correct, a question that was expressly left open in *In re Marriage of Fong* (2011) 193 Cal.App.4th 278, 289–290 [holding that only parties who have served a declaration of disclosure can seek section 2107 sanctions for the other party's failure to do so].) A trial court's order is affirmed if

it is correct on any theory. (*J.B. Aguerre, Inc. v. American Guarantee & Liability Ins. Co.* (1997) 59 Cal.App.4th 6, 15–16.) Here, although Alferma criticizes the accuracy of Earl's disclosures and cites trial testimony in which he admitted to "mistakes" or was seemingly caught in a lie, she has not shown that Earl failed to serve his mandatory disclosures or that they failed "to provide the information required . . . with sufficient particularity." (§ 2107, subd. (a).) The trial court, not us, was in the best position to assess whether the four days of testimony and other evidence it entertained disclosed a sanctionable breach of Earl's disclosure obligations. From its order, it appears to have concluded the evidence did not justify sanctions. Alferma presents us with no basis for disturbing that determination.

DISPOSITION

The judgment is affirmed. The parties are to bear their own costs on appeal.

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Siggins, J.

We concur:

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McGuiness, P.J.

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Jenkins, J.